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MICHAEL RODAK, JR

IN THE

SUPREME COURT OF THE UNITED STATES

MARCH TERM, 1974

No. 73-1449

JAMES M. CARNEY,

Petitioner,

v.

CENTRAL NEW YORK FREIGHTWAYS,

Respondent,

v.

SCHUSTER EXPRESS INC.,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW JERSEY AND THE SUPERIOR COURT APPELLATE DIVISION

JAMES M. CARNEY
20 Lakeview Terrace
Oakland, New Jersey
07436

Petitioner

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IN THE
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Respondent,
v.
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PETITION FOR A WRIT OF CERTIORARI TO THE
UPREME COURT OF THE STATE OF N.J. AND THE
SUPERIOR COURT APPELLATE DIVISION

O THE HONORABLE WARREN E. BERGER, CHEIF
USTICE OF THE SUPREME COURT OF THE UNITED
TATES, AND THE ASSOCIATE JUSTICES OF THE
UPREME COURT OF THE UNITED STATES:

he Petitioner, James M. Carney, respectfully
rays that a Writ of Certiorari issue to
eview the judgment and opinion of the
uperior Court Appellate Division, dated
pril 30,1973; the order Affirmed

the Workmen's Compensation Judge Award, dated May 21, 1973; and the denial of a PETITION FOR CERTIFICATION, to the Supreme Court of the State of N.J., dated October 30, 1973.

OPINIONS BELOW

The judgment was rendered on june 1,1972 in the Hudson County District, Workmen's Compensation Court. Reads as follows;

" IN THIS MATTER THERE ARE THREE CLAIMS FILED, ONE FOR AN ACCIDENT OF MAY 29,1968 BEARING PETITION NUMBER J-15738, ON WHICH THE INSURANCE CARRIER IS TRAVELERS, AND TWO CLAIM PETITIONS AGAINST THE NEW JERSEY MANUFACTURERS INSURANCE CO. BEARING NUMBERS J-16184, FOR AN ALLEGED ACCIDENT OF APRIL 23, 1970, AND K-18065, FOR AN ALLEGED ACCIDENT OF APRIL 23, 1971.

ALL PARTIES HAVE STIPULATED THE JURISDICTIONAL FACTS. THERE IS REALLY ONE ESTIMATE BY THE PETITIONER'S DOCTORS, WHICH COVERS AN EXISTING DISABLILITY AS THEY FOUND HIM AFTER THE COMPETION OF THE THREE ACCIDENTS.

IT BECOMES THE PROBLEM OF THIS COURT NOT ONLY TO TRY TO ESTIMATE A PERMANENT DISABILITY BUT AS TO HOW MUCH GOES WHERE.

TO THE BEST OF MY ABILITY, I FIND THE OVERALL DISABILITY OF THE PETITIONER

WOULD BE 9%, AND THAT IS A COMBINED ORTHOPEDIC AND NEUROLOGICAL. AS TO CLAIM PETITION J-15738, INSURANCE CARRIOR TRAVELERS I WILL FIND THAT THEY ARE RESPONSIBLE FOR 3% PARTIAL TOTAL. THAT WOULD ENTITLE THE PETITIONER TO 16½ WEEKS AT THE $40.00 RATE, TOTALING $600.00. IT IS ALSO STIPULATED THEY WILL PAY $50.00 TOWARDS AN UNAUTHORIZED MEDICAL BILL. AS TO THE DOCTORS, I WILL MAKE AN ALLOWANCE IN THIS CASE AND ALSO IN THE OTHER CASES. I WILL ALLOW DR. VISCONTI, FOR HIS EXAMINATION, APPEARANCE AND TESTIMONY, $40.00, $25.00 BY THE RESPONDENT AND $15.00 BY THE PETITIONER; DR. SIEGEL, FOR HIS EXAMINATION, APPEARANCE AND TESTIMONY, $40.00, $25.00 BY THE RESPONDENT AND $15.00 BY THE PETITIONER. COUNSEL FEE, $125.00, $85.00 BY THE RESPONDENT AND $40.00 BY THE PETITIONER. STENOGRAPHIC FEE, $20.00, PAYABLE BY THE TRAVELERS INSURANCE. IN THE J-16184 AND K-18065, CARRIOR N.J. MANUFACTURERS INS. CO., THEY ARE RESPONSIBLE FOR 6% PARTIAL TOTAL, ORTHOPEDIC AND NEUROLOGICAL IN NATURE. THIS WOULD ENTITLE THE PETITIONER TO 33WEEKS AT THE $40.00 RATE, AMOUNTING TO $1,320. HERE ALSO HAS TO BE CONSIDERED A STATE TEMPORARY DISAB-

ILITY BENEFITS LIEN WHICH WAS PAID THE PETITIONER IN THE AMOUNT OF $648.00. THIS LIEN SHALL BE HONORED. THE PETITIONER WAS ENTITLED TO 8 1/7 WEEKS TEMPORARY AT THE $95.00 RATE, THE AMOUNT OF $773.57. HE IS ENTITLED TO THE DIFFERENCE BETWEEN THE RATE THAT THE STATE PAID HIM AND HIS TEMPORARY COMPENSATION RATE OF $95.00 SO THAT LEAVES A BALANCE DUE THE PETITIONER ON TEMPORATY AFTER THE LIEN IS HONORED OF $125.57.
I WILL ALLOW DR. VISCONTI, FOR HIS EXAMINATION, APPEARANCE AND TESTIMONY, $40.00 $25.00 BY THE RESPONDENT AND $15.00 BY THE PETITIONER: DR. SIEGEL, FOR HIS EXAMINATION, APPEARANCE AND TESTIMONY, $40.00 $25.00 BY THE RESPONDENT AND $15.00 BY THE PETITIONER. ON COUNSEL FEE, I AM ALLOWING $275.00, PAYABLE $175.00 BY THE RESPONDENT AND $100.00 BY THE PETITIONER. I AM BASING THAT UPON THE AMOUNT OF THE AWARD PLUS THE TEMPORARY COMPENSATION DIFFERANCE AND REIMBURSEMENT TO THE PETITIONER OF THESE UNAUTHORIZED BILLS. THERE WILL BE A STENOGRAPHIC FEE PAYABLE BY THE CARRIOR N.J. MANUFACTURERS INS. CO."

On April 30, 1973 an appeal was submitted to the Superior Court Appellate Division. Affirmed the Workmen's Compensation Judge dated May 21, 1973 opinion reads as follows;

"

PETITIONER APPEALS AN AWARD GRANTING HIM 9% OF PARTIAL TOTAL PERMENT DISABILITY AS THE RESULT OF THERE ACCIDENTS SUSTAINED WHILE IN THE EMPLOY OF RESPONDENTS. FOR SEVERAL REASONS, HE CONTENDS THAT THE HEARING BELOW WAS UNFAIR, AND THAT THE

AMOUNT OF HIS AWARD WAS INADEQUATE.

RESPONDENTS STIPULATED AS TO WHAT DOCTORS BILLS THEY WOULD ASSUME, AND PETITIONER'S ATTORNEY ACCEPTED THOSE STIPULATIONS. THE SOLE QUESTION LITIGATED WAS THE NATURE AN EXTENT OF PERMANENT DISABILITY. ALTHOUGH THERE WERE INCONSISTENCIES AND DISCREPANCIES IN THE TESTIMONY, WE CONCLIDE, AFTER CANVASSING THE RECORD, THAT THERE WAS SUFFICIENT CREDIBLE EVIDENCE PRESENT THERE IN TO SUSTAIN THE FINDING OF 9% PERMANENT DISABILITY.
PETITIONER POINTS OUT THAT HE HAS SINCE THE HEARING, SUSTAINED A FOURTH INJURY. THAT INJURY IS NOT PROPERLY BEFORE THIS COURT, AND SHOULD BE THE SUBJECT OF A NEW WORKMEN'S COMPENSATION PETITION. AS TO THE CONTENTION THAT THE WORKMEN'S COMPENSATION JUDGE FAILED TO TAKE INTO ACCOUNT POTENTIAL WORSENING OF HIS CONDITION, PETITIONER IS FREE TO SEEK MODIFICATION IF HIS DISABILITY INCREASES.
AFFIRMED".
On Petition for Certification to the Supreme Court of New Jersey, filed October 30, 1973, denied with cost. Opinion reads as follows;

" TO APPELLATE DIVISION, SUPERIOR COURT:
APETITION FOR CERTIFICATION HAVING BEEN SUBMITTED TO THIS, AND THE COURT HAVING CONSIDERED THE SAME, IT IS HERE UPON ORDERED THAT THE PETITION FOR CERTIFICATION IS DENIED, WITH COSTS.

JURISDICTION

Jurisdiction of this Court is invoked

under Rule 19 (1) (b) (2) of the Rules of the Supreme Court of the United States adopted June 15, 1970 "BECAUSE A COURT OF APPEALS HAS RENDERED A DECISION IN CONFLICT WITH THE DECISION OF ANOTHER COURT OF APPEALS ON THE SAME MATTER, OR HAS DECIDED AN IMPORTANT STATE OR TERRITORIAL QUESTION IN A WAY IN CONFLICT WITH APPLICABLE STATE OR TERRITORIAL LAW; OR HAS SO FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEDINGS, OR SO FAR SANCTIONED SUCH A DEPARTURE BY A LOWER COURT, AS TO CALL FOR AN EXERCISR OF THIS COURT'S POWER OF SUPERVISION."

Jurisdiction of this Court is also invoked under Rule 15 (v) of the Rules of the Supreme Court of the United States, "AS IF THE VALIDITY OF THE STATUTE OF A STATE IS INVOKED."

Jurisdiction of this Court is also invoked under Rule 28 (1) of the Rules of the Supreme Court of the United States, as, "QUESTION OF FACT CAN NOT BE CERTIFIED. ONLY QUESTIONS OR PROPOSITIONS OF LAW MAY BE CERTIFIED, AND THEY MUST BE DISTINCT AND DEFINITE."

QUESTIONS PRESENTED

1. Whether Petitioner was denied all his rights under New Jersey Workmen's Compensation statutes, at the time of the hearing.
2. Whether the Respondent (Schuster Express) omissions and misworded statements made such "AWARD" inadequate in part.
3. Whether Petitioner was denied an appeal by the superior Court Appellate Division and the Supreme Court of New Jersey in

ndered a decision in conflict with the
cision of another court of appeals on
e same matter, and in conflict with
tate Law's and Statutes under Workmen's
mpensation.

CONSTITUTIONAL, STATUTORY AND RULES PROVISIONS INVOLVED

Rule 19 (1) (2) (b) Rules of the Supreme
urt of the United States.
(Same as in Jurisdiction)
Rule 15 (v) Rules of the Supreme Court
the Unites StATES.
"IF THE VALIDITY OF THE STATUTE OF A
STATE IS INVOKED."
Rule 28 (1) Rule of the Supreme Court
the United State.
(same as in Jurisdiction)

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STATEMENT OF THE CASE

itioner JAMES M. CARNEY has suffered

three work connected injuries covered by New Jersey Workmen's Compensation Laws. Claim Petitions J-15738, J-16184 and K-1 8065, were filed with Division of Workmen Compensation. All three Petitions were heard on June 1, 1972 before Judge John J. Witkowski of compensation. His judgement is in OPINIONS BELOW of this brief. Petitioner then filed an appeal with the Superior Court Appellate Division R.S.34 :15-66 (b) (c) which affirmed the workmen compensation judge judgement. Petitioner then filed a Petition for Certification with the Supreme Court of New Jersey which denied with cost.

The facts giving rise to the issues by the within Petition are as follows: On April 23, 1970 claim petition J-16184 the respondent Schuster Express denied my claim for temporary disability and medical treatment at the time of the accident. This company Schuster Express had taken over Central N.Y. Freightways in a sell out, which I had my first back injury with Central N.Y. Freightways J-1 5738. Schuster Express knowing this refered me back to Central N.Y. Freightways insurance company. A dispute arose because neither insurance company would pay me Temporary disability allowed me under R.S. 34:15-12(a) 34:15-14(a). With this in mind I turned to the State Temporary Disability Benefit fund division of Employment Security. I received benefits for $ 483.00 for the period of 4/24/70 thru 6/11/70 (note) claim J-16184. These benefits and medical reimbursements were not incorporated

in the Petitioner Award at the time of the hearing. This is in conflict with R. S. 34:15-15.1.(c) and R.S.34:15-57.1.(b) 34:15-57.2.(c)(d)(e) ,34:15-15(c). A notice of Lien for the benefits I received from the State fund is in possession of the Petitioner.

On April 23, 1971 claim petition K-18065 the respondent Schuster Express again denied me temporary disability payments,but how ever treated me for this injury throught there clinic and hospitalize me. I again applyed to the State fund and received benefits. The Lein for this claim petition was reimbursed at the hearing.

The questions presented in this brief are the same as I made to the Superior Court Appellate and Supreme Court of New Jersey in the petitioner's Appeal. Upon denial of such Appeal entry by the Superior Court Appellate Division Affirming the Judgement and the same of the Supreme Court of N.J. The Petitioner herein respectfully Submits the within Petition for Writ of Certiorari, and the cause is thus presented before this Honorable Court.

ARGUMENT

REASONS FOR GRANTING THE WRIT

The decisions and opinion as rendered by the Workmen's Compensation Judge and Superior Court Appellate Division and Supreme Court of New Jersey in this case, should be reviewed by this Honorable Court for the following reasons:

PETITONER RIGHT'S UNDER TITLE 34, CHAPTER 15, R.S.1937(WORKMEN'S COMPENSATION) LAST OVER, OR OVER LOOKED BY JUDGE.

At the time of the hearing, it was mentioned a dispute on claim petition J-16184, (r.page3&6) the following parts of the transcript will show this;

Respondent (Schuster Express)
"YOUR HONOR, ON CLAIM PETITION J-16184 IT CAN BE ADMITTED BY THE RESPONDENT THAT THE PETITIONER WAS IN THE EMPLOY OF SCHUSTER EXPRESS AND CENTRAL NEW YORK FREIGHTWAYS ON APRIL 23, 1970. HIS WAGES AT THAT TIME WERE $3.95 PER HOUR, WHICH WOULD GIVE RISE TO A WAGE OF $158.00 PER WEEK AND THE MAXimun compensation rate for temporary disABILITY OF $91.00 PER WEEK. THERE WAS NO COMPENSABLE LOST TIME FROM THAT INCIDENT."

Direct Examination by Petitioner Attorney to Petitioner;

Q. "IN APRIL OF 1970 WHILE YOU WERE IN THE EMPLOY OF SCHUSTER EXPRESS CO, YOU WERE LIFTING MATERIALS AND FELT SOME DISCOMFORT IN YOUR BACK. YOU DIDN'T TELL ANYONE ABOUT IT ON THE DAY IT HAPPENED, YOU WENT HOME, YOU WENT TO BED AND WHEN YOU AWAKENED IN THE MORNING YOU HAD SEVERE PAIN IN YOUR BACK; IS THIS CORRECT?" A. "YES". Q. YOU ATTEMPTED TO SECURE TREATMENT FROM YOUR EMPLOYER AND WERE NOT ABLE TO SECURE SUCH TREATMENT BECAUSE THERE WAS A DISPUTE AS TO WHICH WORKMEN'S COMPENSATION INSURANCE CO. WAS RESPONSIBLE FOR THAT TREATMENT, RIGHT?" A. "RIGHT". Q. YOU WENT TO DR. CAVALLI WHO TREATED YOU ON APPROXIMATELY FIFTEEN OCCASIONS?" A. "YES". Q. YOU MADE

SOME PAYMENTS TO DR. CAVALLI AND THERE IS SOME BALANCE IN HIS BILL AT THE PRESENT TIME; IS THAT CORRECT? " A. "YES". No temporary disability or medical reimbursements were made for this claim petition J-16184 at the hearing. It is important to notice in the Opinions Below the Judge of Compensation makes an award of partial total disability on claim petition J-16184. Under the following statutes the Petitioner's Rights were overlooked and in some case were not carried out to what the Statutes require; please refer to appendix R.S.34:15-12.a. 1(a) R.S.34:15-14. 1(a) R.S.34:15-31. 1(a)(b) R.S.34:15-15. 1(c) R.S.34:15-15.1. 1(c). Not receiving such benefits, Petitioner turn to the state fund for disability benefits covering claim pe -tition J-16184, in which petitioner has received a lein from the state fund. A copy of this lein is in the appendix 1(g). At this it is importamt to notice what the Judge and Respondents are required to do under the following statutes; please refer to the appendix. R.S.34:15-57.1. 1(b) R.S. 34:15-57.2. 1(c)(d) N.J.S.A.43:21-29. 1(e) N.J.S.A.43:21-30. 1(e)(f) please note under line in N.J.S.A.43:21-30. Under the above statutes the law is very clear, distinct and definite. The Judge failing to pay temporary disability at the hearing, and failing to reimburse the state fund in which he

is duty bound. on claim petition J-16184. This point is clear in the following case;

Janovsky v. American Motorists Ins. Co. 11 N.J. 1, 93 A.2d 1 (1953).
"WHERE FACT THAT EMPLOYEE HAD RECEIVED PAYMENTS UNDER TEMPORARY DISABILITY BENEFITS LAW, 43:21-25 to 43:21-56, was not mentioned in the workmen's compensation proceedings and award made no reference to such payments insurance carrier, under benefits law, was not barred from asserting its rights of reimbursement from compensation award for pay-ments made under the benefits Law." This case makes it clear that the state fund in which I have a lein must be reimbursed by Law. By Law under R.S.34:15-12.a. 1(a) at the time of the accident on claim petition J-16184 I am entitled $91.00 a week tempora-ry disability benefits(r.page 3) in which I received $69.00 from the State Fund a week. After the STate Fund is reimburst Iam intitle to a rebate of the differance of money as I am allowed under Statute (R.S.34:15-12.a.1(a). In the hearing and the OPINIONS BELOW the Compensation Judge makes such ruling in reimbursement to lein on claim petition K-18065 (r. page18&19). As part of my appeal, I am exercising the following statute in regared to the lein of the state fund.R.S.34:15-39 AGREEMENT AND RELEASES INVALID. "THE RECEIPT OF BENEFITS FROM ANY ASSOCIATION, SOCIETY, OR FUND TO WHICH THE EMPLOYEE SHALL HAVE "i

BEEN A CONTRIBITOR SHALL NOT BAR THE RECOVERY OF DAMAGES BY ACTION AT LAW OR THE RECOVERY OF COMPENSATION UNDER ARTICLE 2 OF THIS CHAPTER (34:15-7 et seq.)". As I am a contributor to the state Fund through my unemployment taxes and disability tax which is requied to be payed by Law in the State of New Jersey.

Under Statute number R.S. 34:15-15.1. and R.S.34:15-15 . 1(c), I am entitled to reimburement of medical expence for claim petition J-16184 in which the Judge of Compensation did not award , but was mention at the hearing(r.page6). These medical expences were made at the time the respondents disputed my claim for Temporary disability benefits and medical treatment on claim petition J-16184.

Under claims petitions J-15738 and J-16184 Pertitioner was examined on Dec. 15, 1970 by Dr. Visconti (r.page13) at which time he sent a report to the petitioner. In which a examination found an estimate of percentage of disability lost due to the above claims. Under Statute R.S. 34:15-16, which require a 26 weeks period of waiting , before any compensation can be found in Compensation Court. Pending such action I incurred another injury to my back, in which the Petitioner was hospitalized (r.page6) on claim petition K-18065. The Statute R.S.34:15-27.1(a) should have been exercised at the time of the hearing.

Although there was no former award, Petitioner points out that the Judge of Compensation failed to research the cases before him, when such proofs were befor him One example of this is in the testimony of the doctors appearing before him. (r.pagell)
A. "DR.(SIEGEL) I EXAMINED THE PETITIONER O MARCH 20,1972,(NOTE THIS DATE).
JUDGE: "BEFORE YOU CONTINUE, DOCTOR, YOU HA ONE EXAMINATION FOR ALL THREE ACCIDENTS?
A. "YES".
A. "DR. (VISCONTI) I FIRST SAW THE PETITION- ER DEC.15,1970 (NOTE THE DATE) AND SAW HIM AGAIN JAN. 25,1972" (NOTE THE DATE) (r.page
It Is important to note the dates mention above for two hearing of Dr. Siegel findings date and said Dr. gave his report. On the other hand the Dr. Visconti mention two dates and gave his finding only on one of 1972, EXAMINATION. (r.page14). This does injustice to the Petitioner to his rights unde R.S.34:15-27. 1(a) . and further more hamper the Judge findings follows; (r.page17).
Judge: "THERE IS REALLY ONE ESTIMATE BY THE PETITIONER'S DOCTORS, WHICH COVERS AN EXIST- ING DISABILITY AS THEY FOUND HIM AFTER THE COMPLETION OF THE THREE ACCIDENTS." "SEE OPINIONS BELOW. 2.these two Doctors were awarded payments for two examination, (r. page 18& 19) appearance and testimonies. In which the Petitioner feels in the above

mention was not made in good faith. And in doing so the Judge went against the Statute R.S.34;15-64 which states, "AND A REASONABLE FEE NOT EXCEEDING FIFTY DOLLARS FOR ANY ONE WITNESS, OR ONE HUNDRED FIFTY DOLLARS IN ANY ONE CASE, FOR MEDICAL WITNESS RESIDING IN THE State when in his judgement the services of an attoney and MEDICAL WITNESSES WERE NECESSARY FOR THE PROPER PRESENTATION OF THE CASE. WHEN, HOWEVER, AT A REASONABLE TIME, PRIOR TO ANY HEARING COMPENSATION HAS BEEN OFFERED AND THE AMOUNT THEN DUE HAS BEEN TENDERED IN GOOD FAITH OR PAID".
Petitioner can not see how the doctors can be paided twice in one hearing, only if all the facts come out. So Petitioner feels that the Judge did not reach to the amount of percentage of disabi -lity which incured by the three accidents and reimbursements due the Petitioner and the State Fund. Required by Law.

II. THE OMISSIONS AND MISWORDED STATEMENTS BY THE RESPONDENT (SCHUSTER EXPRESS) WHICH MADE THE AWARD INADEQUATE AND POSSIBLEY HAMPERED THE WORKMEN'S COM- PENSATION JUDGE'S JUDGMENT.

The petitioner would like to point out to this court when the respondent (Schuster Express) made such misstatements. At the opening of the hearing, the respondent opening statement to the court, (r.page3) on claim petition J-16184;

Respondent: "THERE WAS NO COMPENSABLE LOST TIME FROM THAT INCIDENT." As we already argued this point before, the above statement is not true, as the following Statutes will help prove petitioner is right; refer to appendix, R.S.34:15-31. 1(a)(b) and N.J. S.A.43:21-29. 1(e). As the Law shows the respondent is WRONG . The respondent is not only wrong here, but also in not telling the Court of the dispute in temporary disability and medical coverage on claim petition J-16184, required by insurance carrier under R.S.34:15-57.2.1(c)(d). R.S.34:15-15.1. 1(c),R.S.34:15-15. 1(c). Again the respondent makes a missworded statement when the Judge asked; (r.page16) "I ASUME BOTH RESPONDENTS DO NOT HAVE ANY NEUROLOGICAL EXAMINATION. Respondent; (Schuster Express) A. "THERE HAS BEEN NO NEUROLOGICAL EXAMINATION BY THE RESPONDENT NEW JERSEY MANUFACTURERS ON BEHALF OF SCHUSTER EXPRESS." On claim petition K-18065 the record will show this is incorrect.(r.page6) after being treated by the insurance carrier clinic I was refere to Dr. Winokur for a neurological examinat -ion in which he hospitalized me. Once. again the respondents are WRONG.

III. BRIEFS FILED WITH SUPERIOR COURT APPELLATE DIVISION AND SUPREME COURT OF NEW JERSEY BY RESPONDENT ARE INCONPLITE NOR ARGUED ALL PETITIONER'S POINTS OF LAW. At this time Petitioner would like to point out that the respondents made no argument nor mention any fact of the

following in there briefs, in which the Petitioner's briefs points out to the two courts and this Honorable Court as followes; Temporary Disability, lein to State Fund, reimbursement of medical. The points argued by respondents are only that there was enough proof to show the Judge's percentage of disability was enough for the three accidents. Although petitioner's Appeal is based on a number of things, the omission of facts by the respondents to the dispute on claim petition J-16184 in there briefs, does an injustice to the Petitioner and the State Fund as it did at the hearing. It would seem like the respondents are avoiding Statues R.S.34:15-57.1. 1(b) & R.S.34:15-57.2.1(c)(d) R.S. 34:15-31. 1(a)(b) R.S.34:15-12a.1(a), R.S.34:15 -15.1. 1(c), R.S.34:15-15. 1(c) and N.J. S.A.43:21-30.1(e)(f) N.J.S.A. 43:21-29. 1(e), which speaks for them self in Petitioner's case.

IV.PETITIONER'S RIGHT'S SHOULD HAVE BEEN HEARD AND APPEAL GRANTED BY BOTH COURTS IN NEW JERSEY BY LAW. Although Petitioner appeal is based on several reasons, here are some judgements and opinions handed down by Appeals Court. In the Janovsky v. amer. Motorists 11N.J. 1, 93A. 2d 1 (1953) case it is clear by law the State Fund must be reimbursed. At this time the checks I received and didnot cas from the award of June 1,1972 because of the appeal. The State

Fund is entitled to reimbursement from pa
of it as the case in Janovsky v.Amer.
Motorists .11N.J. 1, 93 A.2d para. (1)
Because no tempprary disability was award
at the time of the hearing on claim petit-
ion J-16184, and the record shows that th
Petitioner's disability was related to th
compensation Statutes, as mentioned in th
cited case, "WHERE IT IS CLEAR THE LIABIL
IS UNDER THE COMPENSATION LAWS, IT WILL B
PAID UNDER SUCH LAWS." (SEE COX,JUDGE LEA
-ED HAND AND THE INTERPERTATION OF STATUT
60HARV. L. REV.370 (1947). As the Petitio
appeal and case does here. It is very imp
tant to read Judge Foley opinion of the
Superior Court Appellate Division Pruden-
tial Ins. v. New Jersey Division of Empl-
oyment Sec. 75 N.J. Super. 430, 183 A 2d
440(1962). " IT IS TRUE THAT THE WORKMEN'
COMPENSATION JUDGE MAY HAVE ERRONEOUSLY
NEGLECTED TO AWARD FOR THE TEMPORARY DIS-
ABILITY BUT IF SO SHE HAD A RIGHT OF APPE
Though her workmen's compensation case fo
unrelated to her lost time from work. Pet
ioner's time was a related lost of time
claim petition J-16184 in which the Judge
makes award. So as Judge Foley states, th
petitioner's rights of appeal, should be
heard, if no temporary disability was awa
V. THE OPINIONS OF THE SUPERIOR COURT APP
ELLATE DIVISION AND SUPREME COURT OF N.J.
ARE INCONPLITE AND UNJUSTLY.

In receiving the Superior Court Appellate Division opinion it must be noted there a opinion is short and no mention of the fact about temporary disability, lein and reimbursements which petitioner put before them. However the Petitioner who is doing all the nessary work to prepare the appeal made a statement in his (statement of case) in his Appellate brief which can be found in (opinions below) of this brief. Although Petitioner is not familiar with the practices of briefs in law, the court should not hold it against him please. This point as I made to the Supreme Court of N.J. I make to this Honorable Court here I am not seeking compensation for the fourth injury which I mentioned in only my (appellate brief statement of case) only to the facts of law presented to this Honorable Court. Although the opinion of the court tells petitioner to reopen his case because the Workmen's Compensation Judge failed to take into account potential worsening of petitioner's condition, (which is part of petitioner's appeal). Upon this suggestion, Petitioner went to the Division of Workmen's Compensation and explained the case to them. There answer was the things petitioner is seeking can only been awarded at the original hearing or on appeal R.S.34:15-66.1(b)(c). Also in the court opinion was the fact they found inconsistencies and discrepancies in the testimony. (in which is an important

factor to the appeal). It is the opinion of the Petitioner that the following reason will answer this Honorable Court why the two court opinions are not in the best of justice. In the late part of May of 1973 petitioner received the opinion of the Superior Court at which time a newspaper gave a report on the court systemes of N.J. head line as "BRIEF OPINIONS CALLED UNSATISFACTORY." JUSTICE CRITICIZES APPEALS SPEEDUP. WHICH CAN BE FOUND IN THE NEWARK SUNDAY STAR-LEDGER OF MAY 20, 1973 PAGE32 SECTION 1. In which it cites Supreme Court Justice Worrall F. Mountain Jr. statements, as follows; JUSTICE MOUNTAIN CHARACTERIZED THE PACE OF APPEALS AS HARMFUL TO THE STATE JUDICIAL SYSTEM, WITH PARTICULAR EMPHASIS ON WHAT IT IS DOING TO THE HIGH COURT. JUSTICE MOUNTAIN REFERRED TO THE APPELLATE DIVISION OF SUPERIOR COURT AS "THE HEART AND SOUL OF THE COURT SUSTEM OF N.J." " I SAT THERE 2½ YEARS AGO, WHEN WE HANDLED ONLY 8 APPEALS A WEEK AND THOUGH WE WERE OVERWORKED. NOW THEY ARE HANDLING 16 AND SOMETIMES 18 APPEALS ARGUMENTS A WEEK. THIS IS UNSATISFACTORY TO EVERYONE." AT THE SAME TIME THE HIGH COURT ORERED APPELLATE DIVISION JUDGES TO REFRAIN FROM WRITING LENGHTY OPINIONS IN ORDER TO HANDLE THE HEAVIER LOAD. THE RESULT IS THAT NUMEROUS OPINIONS ARE BEING WRITTEN IN ONE PARAGRAGH. "THESE BRIEF OPINIONS ARE NOT SATISFACTORY TO EITHER THE PUBLIC OR THE COURT". JUSTICE MOUNTAIN SAID, "THE APPELLATE COURT WOULD

LIKE TO WRITE AND RESEARCH AND EXPRESS."
"IT'S VERY HARD FOR THE SUPREME COURT TO ENTERTAIN A REVIEW OF THE APPELLATE DIVISION'S DECISIONS WHEN THERE ARE NO FULL OPINIONS. WE HAVE ALREADY LEARNED OF THAT."

Concusion

The Petitioner respectfully askes this Honorable Court in reviewing all the facts of law, Statutes and injustices in this case, through no fault of Petitioner's, remand this case to what court this Honorable Court feels fit to be. So that the Petition -er's case can be heard in it's entirety and the Statutes be carried out to the full extent of the State Workmen's Compensation and Division of Employment Securty Laws. For the reasons herein, the decision of the Workmen's Compensation Judge, Superior Court Appellate Division and Supreme Court of N.J. are in conflict with the decisions of other courts of appeal, as well as with the applicable decision of this Honorable Court. Also the decision of said Courts are invoked the validity of state statutes and has so far departed the accepted and usual course of judicial proceedings, and in part sanctioned such a departure by a lower court in which this court should of exercise the court's power of supervision.

Petitioner, therefore respectfully urges this Honorable Court to grant a Petition For Writ Of Certiorari in the within cause.

JAMES M. CARNEY
20 LAKEVIEW TERR.
OAKLAND, N.J. 07436

PETITIONER

BY James M. Carney
JAMES M. CARNEY

CERTIFICATE OF SERVICE

I HEARBY CERTIFY that copies have been sent to both respondents (Schuster Express & Central N.Y. Freightways) of the foregoing Petition for Writ of Certiorari was mailed on this 27 day of March, 1974.

James M. Carney
JAMES M. CARNEY

R.S.34;15-12.a TEMPORARY DISABILITY.

"For injury producing temporary disability 66 2/3% of the weekly wages received at the time of the injury, the amount of the maximum compensation shall be computed, determined, rounded out to the nearest dollar, and promulgated by the Commissioner of Labor and Industry on or before Sept.1 in each year based on said average weekly wages as of the calendar year preceding, and shall be effective as to injuries occurring in the calendar year following such promulgation."

R.S.34;15-14. WAITING PERIOD.

"No Compensation other than medical aid shall accrue and be payable until the employee has been disabled 7 days. Should the total period of disability extend beyond 7 days, additional compensation shall at once become payable covering the above prescribed waiting period."

R.S.34;15-27. MODIFICATION, REVIEW OF AWARD

"Determination and rule for judgment or order approving settlement may be reviewed within two years from the date when the injured person last received a payment upon the application either party on the grounds that the incapacity of the injured employee has subsequently increased. "

R.S.34;15-31. COMPENSABLE OCCUPATIONAL DISEASES.

"For the purposes of this article, the phrase "COMPENSABLE OCCUPATIONAL DISEASES" shall include all diseases arising out of and in the course of employment, which are

due to cause and conditions which are or were characteristic of or peculiar to a particular trade, occupational, process or employment, or which dieases are due to the exposure of any employee to a cause thereof arising out of and in the course of his employment."

R.S.34;15-57.1. ORDER TO REIMBURSE DISABILITY BENEFITS FUND

"Whenever an employee becomes entitled to or is awarded compensation for temporary disability pursuant to chapter 15 of title 34 of the revised Statutes for the same weeks or period with respect to which he has received disability benefits pursuant to the TEMPORARY DISABILITY BENEFITS LAW (P.L. 1968, c. 110), the Deputy Directors or Referees of the Division of Workmen's Compensation are authorized to incorporate in such award, order, or approval of settement, an order requiring the employer or his insurance carrier to reimburse the Division of Employment Secuity of the New Jersey Department of Labor and Industry, the employer involved in the claim under chapter 15 of title 34 of the Revised Statutes, or his insurance carrier, as the case may be, the amount of any disability benefits it may have paid to such employee."

R.S.34;15-66. APPEAL,

"Any party may appeal from the judgment of a judge of compensation to the Appellate Division of the Superior Court, which appeal shall be taken in accordance with the rules of court. The judgment entered in any court on any such appeal shall be conclusive and binding, and proceeding thereon shall only be for the recovery of

moneys thereby determined to be due. Nothing herein contained shall be construed as limiting the jurisdiction of the Supreme Court. Costs may be awarded in accordance with the rules of any court to which an appeal is taken."

R.S.34;15-15.1. REPAYMENT OF MEDICAL.

"Whenever the expense of medical, surgical or hospital services, to which the petitioner would be entitled to reimbursement if such petitioner had paid the same as provided in section 34;15-15 of the Revised Statutes, the Deputy Directors or Referees of the Division of Workmen's Compensation are authorized to incorporate in any award, order or approval of settlement, an order requiring the employer or his insurance carrier to reimburse such insurance company, person in the amount of such medical, services so paid on behalf of such petitioer."

R.S.34;15-15. MEDICAL SERVICE.

"THE employer shall furnish to the injured workmen such medical, surgical and other treatment, and hospital service as shall be necessary to cure and relieve the workman of the effects of the injury and to restore the functions of the injured member or organ where such restoration is possilbe;

If the employer shall refuse or neglect to comply with the foregoing provisions of this section the employee may secure such treatment and services as may be neccessary and as may come within the terms of this section, and the employer shall be liable to pay therefor;

R.S.34:15-57.2. TO MAKE INJURY OF EMPLOYEE BENEFITS RECEIVED; PROCEEDINGS. Whenever

an employer or his insurance carrier involved in the claim under chapter 15 of Title 34 of the Revised Statutes receive written notice from the Division of Employment Security of the New Jersey Department of Labor and Industry that disability benefits have been paid to an employee as a result of an accident or sickness for which the said employee may be entitled to benefits under chapter, 15 of title of Revised Statutes, such employer or his insurance carrier, as the case may be, shall, before making any payment on account of any pending award, order, or settlement under said chapter 15 of Title 34 of the Revised Statutes, inquire of the employee as to whether or not he has received disability benefits by reason of the same accident or sickness and advise the Division of Employment Security of the New Jersey Department of Labor and Industry or the employer who made payment of the disability benefits, or his insurance carrier, as the case may be, of the result of such injuiry.

In proceedings before the Division of Workmen's Compensation, it shall be duty of the employer against whom claim is made under chapter 15 of Title 34 of the Revised Statutes, and his insurance carrier, if any, to present, at any hearing involving a workmen's compensation claim affected by this act, sufficient proof as to the amounts paid under the Temporary Disability Benefits Law (P.L.1948, c. 110), for which reimbursement is allowable in pursuance of the provisions of the Temporary Disability Benefits Law (P.L. 1948,c.110) such proof to be furnished by the Division

of Employment Security of the New Jersey Department of Labor and Industry, the employer who made payment of the disability or his insurance carrier, as the case may be.

N.J.S.A. 43:21-1
N.J.S.A. 43:21-25 TEMPORARY DISABILITY BENEFITS LAW.
N.J.S.A.43:21-29 COMPENSABLE DISABILITY.
"Disability shall be compensable subject to the limitations of this act, where a covered individual suffers any accident or sickness not arising out of and in the course of his employment or if so arising not compensable under the workmen's compensation law (Title 34 of the Revised Statutes), and resulting in his total inability to perform the duties of his employment."
N.J.S.A. 43:21-30 NONDUPLICATION OF BENEfits.
"No benefits shall be required or paid under this act for any period with respect to which benefits are paid or payable under any unemployment compensation or similar law, or under any disability or cash sickness benefits or similar law, of this State or any other State of the Federal Goverment. Nor shall any benefits be required or paid under this act for act for any period with respect to which benefits, other than benefits for permanent partial or permanent total disability previously incurred, are paid or payable on account of the disability of the covered individual under any workmen's compensation law, occupational disease law, or similar legislation, of this state or of any other State or the Federal

Government. Where a claimant's claim for compensation for temporary disability, under the provisionsof subparagraph a. of section 34:15-12 of the Revised Statutes, IS CONTESTED, AND THEREBY DELAYED, AND SUCH claimant is otherwise eligible for benefits under this chapter, said claimant shall be paid the benefits provided by this chapter UNTIL AND UNLESS SAID CLAIMANT RECEIVES compensation under the provisions of sub-PARAGRAPH a. of section 34:15-12 of the Revised Statutes. In the event that workmen's compensation benefits, other than benefits for permanent partial of permanent total disability previously incurred, are subsequently awarded for weeks with respect to which the claimnet has received disability benefits pursuant to this act, the State fund, or the private plan, as the case may be, shall be entitle to be subrogated to such claiment's rights in such award to the extent of the amount of disability payments made here under. Disability benefits otherwise required hereunder shall be reduced by the amount paid concurrently under any governmental or private retirement, pension or permanent disability benefits or allowance program to which his most receny employer contributed on his behalf."

N.J.S.A.43:21-56 Severability.

1(g)

DS-3 (R-3-68)
State of New Jersey
Department of Labor and Industry
DIVISION OF EMPLOYMENT SECURITY

NOTICE OF LIEN

Claim Petition No. K-14065 J-16164

Date May 26, 1971

Petitioner James H. Carney

S.S. No. 141-32-4699

Respondent Schuster Express

Insurance Carrier New Jersey Manufacturers Ins. Co.

This lien attaches to entire Workmen's Compensation award. See Prudential vs. Div. of Empl. Sec. et als (1962)-75 N. J. S. 490, 183 Atl. 2d 440.

Case Assigned to

Bureau of [illegible] Back Street Rd.

To Workmen's Compensation Division:

Please take notice that the Division of Employment Security has a lien against any award in Workmen's Compensation issuing out of the above-mentioned matter and any judgment entered herein should provide for payment of said lien. Temporary Disability Benefits have been paid as follows:

First Day of Disability	Weekly Amount	Amount Paid
4-24-70 thru 6-11-70	$69.00	$483.00

Kindly direct this notice so that the lien of the State of New Jersey will be properly noted and, upon entering of an judgment, return blue copy showing disposition of claimant's petition.

Division of Employment Security

[illegible] A. Turner, Examiner

Sujr
cc: James H. Carney
Schuster Express
New Jersey Manufacturers Ins. Co.

COPY